

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY CABLE TELECOMMUNICATIONS	)	
ASSOCIATION	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO. 2003-00056
	)	
JACKSON PURCHASE ENERGY CORPORATION	)	
	)	
DEFENDANT	)	

O R D E R

On September 19, 2003, Kentucky Cable Telecommunications Association and Jackson Purchase Energy Corporation jointly filed with the Commission a Settlement Agreement addressing the issues in the above-captioned case and requesting that the Commission approve the Settlement Agreement. The Commission hereby finds that the Settlement Agreement is reasonable and should be approved.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement attached hereto as Appendix A is approved.
2. This case is dismissed with prejudice and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 21st day of October, 2003.

By the Commission

ATTEST:

  
\_\_\_\_\_  
Executive Director

## APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2003-00056 DATED October 21, 2003.

BEFORE THE PUBLIC SERVICE COMMISSION **RECEIVED**

In the Matter of

**Kentucky Cable  
Telecommunications Association,**  
Complainant,

v.

**Jackson Purchase Energy Corporation,**  
Defendant.

SEP 19 2003

PUBLIC SERVICE  
COMMISSION

No. 2003-00056

**SETTLEMENT AGREEMENT**

THIS AGREEMENT is made as of the last date executed herein by and between Jackson Purchase Energy Corporation ("JPEC"), the Kentucky Cable Telecommunications Association ("KCTA"), Charter Communications ("Charter"), Comcast Cablevision of Paducah, Inc. ("Comcast") and Mediacom Southeast LLC ("Mediacom") (Charter, Comcast and Mediacom separately "Cable Company" and jointly "Cable Companies") ("the Parties", where referring to all parties, including JPEC and "Party" where referred to separately).

**WITNESSETH**

**WHEREAS**, JPEC has alleged that the Cable Companies are liable for unauthorized attachment penalties, double "makeready" payments, and the costs of inspections and audits under JPEC's pole attachment tariff; and

**WHEREAS**, KCTA and the Cable Companies have denied JPEC's allegations, and KCTA has filed a Complaint in the captioned action with the Kentucky Public Service Commission ("KPSC"); and

**WHEREAS**, JPEC has denied the allegations of the Complaint and has filed a Counterclaim with the KPSC; and

**WHEREAS**, KCTA has denied the allegations of the Counterclaim; and

**WHEREAS**, the Parties desire to settle this dispute without further administrative or judicial action;

**NOW THEREFORE**, in consideration of the promises and undertakings herein, and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, and subject to the approval of this Settlement Agreement by the KPSC,

**THE PARTIES DO HEREBY AGREE AS FOLLOWS:**

**1. KPSC Approval**

This Settlement Agreement is not effective until it is approved by the KPSC. Within 5 business days after the last Party has executed this Settlement Agreement, KCTA and JPEC shall jointly request the KPSC to approve this Settlement. Within 10 business days after the KPSC has approved the Settlement Agreement, if the KPSC has not already dismissed the Complaint and the Counterclaims in the captioned proceeding, JPEC and KCTA shall jointly move that the Complaint and the Counterclaims be dismissed in their entirety.

## **2. Payments by Cable Companies**

Within 10 business days after the KPSC has approved this Settlement Agreement, Comcast shall pay to JPEC the amount of \$51,355 by check or electronic transfer; Charter shall pay to JPEC the amount of \$7,175 by check or electronic transfer, and Mediacom shall pay to JPEC the amount of \$7,890 by check or electronic transfer.

## **3. Releases**

a. KCTA, Comcast, Charter, and Mediacom do hereby release and forever discharge JPEC, its agents, directors, officers, representatives and attorneys from any and all claims, demands, liabilities, actions, or causes of action of any kind or nature, known or unknown, asserted or unasserted, existing or contingent, direct or derivative, that may now exist or may hereafter arise in any manner or degree from facts and circumstances occurring prior to and including the date of this Settlement Agreement, arising out of, or in any way directly or indirectly connected with or resulting from the matters alleged or which could have been alleged by KCTA or the Cable Companies related to pole attachment payments or practices, except as specifically set out in this Settlement Agreement.

b. JPEC does hereby release and forever discharge KCTA, Comcast, Charter and Mediacom, their agents, directors, officers, representatives and attorneys from any and all claims, demands, liabilities, actions, or causes of action of any kind or nature, known or unknown, asserted or

unasserted, existing or contingent, direct or derivative, that may now exist or may hereafter arise in any manner or degree from facts and circumstances occurring prior to and including the date of this Settlement Agreement, arising out of, or in any way directly or indirectly connected with or resulting from the matters alleged or which could have been alleged by JPEC related to pole attachment payments or practices, except as specifically set out in this Settlement Agreement. Without limiting the foregoing, JPEC agrees that, among other claims and assertions, it hereby waives any existing claims and assertions for double makeready payments, unauthorized attachment penalties, unpaid pole attachment fees, and reimbursement for any inspections, surveys and audits.

c. The Cable Companies agree that they shall release JPEC for any damage caused to the Cable Companies' risers by the simple negligence of JPEC or its agents or employees during the term of this Settlement Agreement. This release shall not cover damage to the Cable Companies' risers by JPEC or its agents or employees where such damage results from grossly negligent or willful conduct.

d. All claims between the Parties in the captioned proceeding are disputed. Nothing in this Settlement Agreement shall be construed as an admission of liability or fault by any Party for any purpose whatsoever.

#### **4. Definition of "Pole Attachment"**

a. For purposes of billing each Cable Company yearly rental charges, and for the term of this Settlement Agreement, JPEC shall count as a

single pole attachment all pole contacts by that Cable Company that are contained within one foot of usable space on JPEC's utility poles. In addition, JPEC shall count as a separate single pole attachment all pole contacts by the Cable Company that are contained within one foot of space on drop and lift poles owned by JPEC. Each power supply shall be treated as a single separate attachment for these purposes. Neither risers, nor service drops of the Cable Companies that are not attached to JPEC's poles, shall be treated as pole attachments. Attachments of service drops by the Cable Companies to JPEC drop and lift poles shall be treated as "attachments" under this definition, but it is agreed that the Cable Companies may make attachments to drop and lift poles without the attachments being considered to be "unauthorized attachments" so long as the Cable Companies submit proper applications for attachment permits within 10 work days after the drop or lift pole attachments are made.

b. Except as otherwise provided in paragraph 4.a., all pole contacts that are not contained within one foot of usable space on any JPEC pole shall be treated as a separate pole attachment.

#### **5. Correction of Climbing Space Violations**

The Cable Companies shall correct, at their own expense and within 60 days of written notice by JPEC, any violations of the climbing space requirements of the National Electrical Safety Code ("NESC") that result from the Cable Companies' service drops being attached to the Cable Companies' strand too close to JPEC's poles. If in the reasonable determination of JPEC, a service

drop that is attached within 15 inches of a distribution pole will unduly restrict JPEC's linemen, even if the service drop does not violate NESC climbing space requirements, the Cable Company will cooperate with JPEC to resolve the problem.

**6. Joint Inspection and Cure of NESC Violations**

a. For purposes of this paragraph 6:

i. "Rearrangement" and "rearranging" shall mean the process of moving existing attachments to different locations on the same pole, or other adjustment of existing attachments through tightening strand, resagging, and other methods that do not involve the installation of a new pole, strengthening an existing pole, removing facilities from a pole or transferring facilities to another pole.

ii. A violation of the NESC shall be deemed to be "associated" with an attachment when the attachment or the facilities supported by the attachment violate the NESC, either because of proximity to another Party's attachment or standing alone, such as where, for example, an attachment is determined to be too close to another attachment at the pole, or where the facilities carried on the attachment violate ground clearance or separations requirements at mid-span.

iii. In circumstances in which an NESC violation results from the proximity of one Party's attachment to another, a Party shall be deemed to have "caused" an NESC violation when its attachment of a facility that is



associated with the NESC violation was made after another attachment also associated with the NESC violation was made by another party (whether a Party hereto or otherwise). For example, a Cable Company shall be deemed to have "caused" a violation of the NESC separations requirements where the Cable Company's attachment was placed by the Cable Company or its predecessor in violation of the NESC after JPEC placed one of the JPEC facilities with which the Cable Company's facilities conflict. As another example, JPEC shall be deemed to have "caused" a violation of the NESC separations requirement where JPEC placed a transformer closer to an existing Cable Company attachment than permitted by the NESC.

iv. In determining which Party has caused an NESC violation under this paragraph 6, the Parties agree to use any available records, including records showing when attachments were installed or engineered, when approval to make attachments was applied for or granted, when services were first provided in an area by a Party and when houses served by transformers were constructed.

b. JPEC and the Cable Companies will cooperate and participate, each at their own expense, in the conduct of a joint inspection of JPEC's poles beginning within 30 days after KPSC approval of this Settlement Agreement to count the Cable Companies' attachments on JPEC's poles and to determine whether the Cable Companies' facilities on JPEC's poles are associated with any violations of the NESC. The inspections regarding each of

the Cable Companies will be conducted separately in the following order: Comcast, Mediacom, and then Charter. JPEC will be responsible for scheduling the pre-inspection meetings and the inspection times, and for giving timely notice therefor. In counting the number of attachments to JPEC's poles, the Parties shall use the definition of "pole attachments" set forth in paragraph 4 above. The number of attachments counted in the joint inspection for each of the Cable Companies shall be the baseline for authorized attachments from that time forward. No attachment counted in the joint inspection shall be treated at any time as unauthorized.

c. Any NESC violations associated with the Cable Companies' attachments identified in the joint inspection shall be cured as follows:

i. First, if an NESC violation can be cured by the Cable Company rearranging its facilities on the pole, the Cable Company will undertake such rearrangement at its expense, without regard to who created or caused the violation. If rearranging of telephone company facilities is necessary in order for the Cable Company to cure under this subparagraph, the Cable Company shall not be responsible for rearranging said facilities, but shall promptly notify JPEC of same, and JPEC shall be responsible for assuring that said facilities are rearranged to allow for cure by the Cable Company.

ii. Second, if the NESC violation cannot be entirely cured by rearrangement of the facilities on the pole, as in subparagraph i, but can be cured by JPEC rearranging of its facilities on the pole and not being in

violation of construction standards required under its mortgages, JPEC will undertake such rearrangement at its expense, without regard to who created or caused the violation;

iii. Third, if the NESC violation cannot be entirely cured by the arrangements discussed in subparagraphs i and ii, JPEC shall take such other action as necessary to cure the violation, including replacing the pole if necessary or requiring other joint pole users to adjust their facilities. If available records show that the Cable Company caused the NESC violation, e.g., if the Cable Company's attachment was made after an attachment of JPEC and/or other pole user that is associated with the violation was made, the Cable Company shall pay the actual cost of curing the violation. The actual cost of replacing a pole, where that is necessary to cure the violation, shall be the cost of acquiring and installing the new pole, and removing the old pole, less the salvage value of the removed pole. Transferring facilities to the new pole shall be performed by the owners of the facilities, at their own expense.

iv. If a violation cannot be cured pursuant to subparagraphs i or ii, and available records show that the Cable Company did not cause the NESC violation, the Cable Company shall not be responsible for any of the cost of curing the violation, except that any transfer of the Cable Company's facilities to a new pole shall be performed by the Cable Company at its expense.

v. If a violation cannot be cured pursuant to subparagraphs i or ii, and it cannot be determined whether or not the Cable Company caused the violation, then JPEC and the Cable Company shall evenly split the actual cost of curing the violation; however, transferring facilities to the new pole shall be performed by the owners of the facilities, at their own expense. The actual cost of replacing a pole pursuant to this subsection shall be defined as in subsection iii.

vi. Each Party shall cooperate fully in making available to the other Parties in a timely manner all records that may help in determining whether the Cable Company or some other party caused a violation.

vii. Any NESC violation to be cured pursuant to this paragraph 6.c. shall be cured within 120 days, provided that the Parties may extend this time by mutual agreement. Violations causing the most imminent danger shall be cured first.

viii. If the Parties disagree about whether or not a violation exists or whether the records show that the Cable Company has caused a particular violation, either Party to the particular dispute may enlist the aid of the Staff of the KPSC to mediate or otherwise assist in resolving the dispute.

## **7. Binding Nature of Agreement**

The terms of this Settlement Agreement shall be binding upon and inure to the benefit of the successors, assigns, and representatives of the Parties hereto; provided that a Cable Company may not assign or otherwise transfer its

contract with JPEC, in whole or in part, without the written consent of JPEC, which shall not be unreasonably withheld.

**8. Own Expenses**

The Parties shall bear their own costs and expenses associated with the captioned case, including attorneys' fees.

**9. Term**

The term of this Settlement Agreement shall be 10 years from the date of KPSC approval.

**10. Tariff Revisions or Related Actions by the KPSC**

The Parties hereto agree not to initiate any action, or to encourage any other person or entity to initiate such action, at the KPSC, or in any other forum, designed directly or indirectly to overturn or undercut the agreements contained in this Settlement Agreement. JPEC hereby agrees not to amend its pole attachment tariff in any way that would be inconsistent with the understandings and undertakings contained in this Settlement Agreement. Nevertheless, no Party to this Settlement Agreement shall be prevented from taking any position in any proceeding before the KPSC or any other forum, which addresses the issues covered in this Settlement Agreement, and if the final order from such proceeding alters or modifies the definition of "pole attachment" set forth herein, such altered or modified definition shall automatically apply herein. It is understood and agreed that nothing in this Settlement Agreement shall prevent JPEC from amending or seeking to amend its pole attachment tariff,

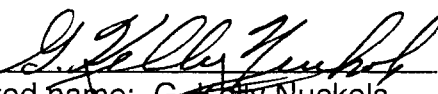
except that no such amendment shall be inconsistent with the terms of this Settlement Agreement.

#### 11. Modifications and Execution

This Settlement Agreement shall not be modified except in writing and signed by all Parties hereto. This Settlement Agreement may be signed in counterpart.

**IN WITNESS WHEREOF**, this Settlement Agreement is executed by duly authorized representatives of the Parties as follows:

Dated: September 8, 2003      Jackson Purchase Energy Corporation

By:   
Printed name: G. Kelly Nuckols  
Title: President/CEO

Dated: September \_\_, 2003      Kentucky Cable Telecommunications Assoc.

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: September \_\_, 2003      Comcast Cablevision of Paducah, Inc.

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: September \_\_, 2003      Charter Communications

except that no such amendment shall be inconsistent with the terms of this Settlement Agreement.

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This Settlement Agreement shall not be modified except in writing and signed by all Parties hereto. This Settlement Agreement may be signed in counterpart.

**IN WITNESS WHEREOF**, this Settlement Agreement is executed by duly authorized representatives of the Parties as follows:

Dated: September \_\_, 2003

Jackson Purchase Energy Company

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: September 2, 2003

Kentucky Cable Telecommunications Assoc.

By: Patsy Judd  
Printed name: Patsy Judd  
Title: Executive Director

Dated: September \_\_, 2003

Comcast Cablevision of Paducah, Inc.

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: September \_\_, 2003

Charter Communications

except that no such amendment shall be inconsistent with the terms of this Settlement Agreement.

#### 11. Modifications and Execution

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**IN WITNESS WHEREOF**, this Settlement Agreement is executed by duly authorized representatives of the Parties as follows:

Dated: September\_\_\_\_, 2003

Jackson Purchase Energy Company

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: September\_\_\_\_, 2003

Kentucky Cable Telecommunications Assoc.

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: September 8, 2003

Comcast Cablevision of Paducah, Inc.

By: Steven A. White  
Printed name: Steven A. White  
Title: Regional Senior Vice-President



except that no such amendment shall be inconsistent with the terms of this Settlement Agreement.

#### 11. Modifications and Execution

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**IN WITNESS WHEREOF**, this Settlement Agreement is executed by duly authorized representatives of the Parties as follows:

Dated: September\_\_\_\_, 2003

Jackson Purchase Energy Company

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: September\_\_\_\_, 2003

Kentucky Cable Telecommunications Assoc.

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

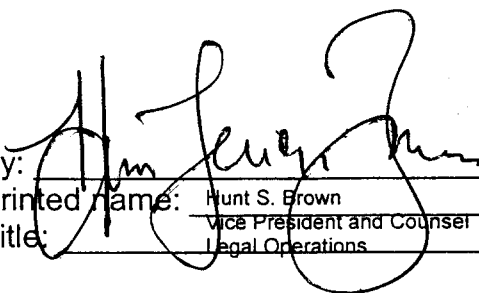
Dated: September \_\_\_\_, 2003

Comcast Cablevision of Paducah, Inc.

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: September 8, 2003

Charter Communications

By:   
Printed name: Hunt S. Brown  
Title: Vice President and Counsel  
Legal Operations

Dated: September \_\_, 2003

Mediacom ~~Communications, Inc.~~  
*Seotheast LLC*

By : \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: September 8, 2003

Mediacom Communications, Inc.  
Southeast LLC

By: Bruce Gluckman  
Printed name: BRUCE GLUCKMAN  
Title: V.P. OF LEGAL & REGULATORY AFFAIRS